

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**STECKLER GRESHAM COCHRAN PLLC'S REPLY IN SUPPORT OF ITS MOTION
TO RELEASE THE 5% HOLDBACK AND REQUEST FOR EXPEDITED HEARINGS**

Steckler Gresham Cochran PLLC ("SGC") on behalf of its clients, and all others similarly situated with Parkinson's, Alzheimer's, ALS, or Death with CTE (collectively, the "Undisputed Diagnoses"), files this Reply in Support of Its Motion to Release the 5% Holdback and Request for Expedited Hearings, and would show the Court as follows:

SGC's Motion to Release the 5% Holdback and Request for Expedited Hearings (the "Motion") is not untimely, waived, or merely "a partial objection to Co-Lead Class Counsel's set-aside application," as Class Counsel contends. [ECF No. 10596 at 3]. SGC filed a timely objection on March 27, 2017 [ECF No. 7353], which was never heard by this Court. Instead, more than two

SGC's Reply in Support of its Motion to Release the 5% Holdback and Request for Expedited Hearings

years after this Court adopted Class Counsel’s **provisional** set-aside, which received more than a dozen objections,¹ it has become clear that SGC’s concerns, as well as several other class members’ concerns, regarding the unfairness of the set-aside are justified. *See, e.g.*, [ECF Nos. 7464 at 45-47; 7353 at 1-3]. Namely, that Class Counsel continues to tie up money needed by the sickest claimants by insisting on the 5% holdback. Class Counsel has failed to show any concern for or understanding of the very ill individuals who *need* the money. Life expectancy and care are real issues wholly ignored by Class Counsel.

Since Class Counsel petitioned this Court “for an award of attorneys’ fees and reimbursement of costs and litigation expenses for their work up to date in this litigation” in the form of a 5% holdback in February 2017, the nature of the NFL and Class Counsel’s involvement in the claims process has become apparent: diagnoses and claims for Levels 1.5 and 2 Neurocognitive Impairment has generated nearly all of the litigation, where Class Counsel has the *opportunity* to perform work on behalf of class members in the claims settlement process, while the Undisputed Diagnoses require virtually no time, money, or work on behalf of Class Counsel and generally do not even afford Class Counsel the opportunity to perform any work.

The approval rates for the respective diagnoses provide a useful and empirical illustration:

Death with CTE:	62%
ALS:	66%
Alzheimer’s:	59%
Parkinson’s:	74%
Level 2 Neurocognitive Impairment:	19%
Level 1.5 Neurocognitive Impairment:	20% ²

The approval rates are alarmingly higher in the Undisputed Diagnoses because the Settlement Agreement streamlined the process for those claims, essentially requiring nothing more than an

¹ *See* ECF Nos. 7205, 7299, 7344, 7346, 7351, 7353, 7359, 7360, 7367, 7371, 7373, 7375, 7401-1.

² NFL Settlement Program Summary Report (As Of 5/6/19) §§ 8, 11, attached hereto as Exhibit A.

approved physicians' diagnosis of one of the four Undisputed Diagnoses for a claimant to be paid. On the other hand, diagnosing Neurocognitive Impairment is far more subjective resulting in many objections, audits, and appeals where Class Counsel may, but certainly does not have to, step in and perform actual work on behalf of those class members. Indeed, Class Counsel has only filed a total of 33 statements in the 342 appeals to date, which is less than 10%.³

Other statistics further support SGC's argument. As of May 6, 2019, there are 22 claims on appeal, 19 of which are for Neurocognitive Impairment.⁴ There are 58 claims in audit investigation, 57 of which are for Neurocognitive Impairment.⁵ There are 178 claims that have been referred to the Special Investigator by the Special Master, 175 of which are for Neurocognitive Impairment.⁶ It is clear that SGC is not presupposing that the class members with the Undisputed Diagnoses "will not need to avail themselves of the appeals process, which *could* well require assistance from Class Counsel." [ECF No. 10596 at 5] (emphasis added). Instead, the numbers speak for themselves and show that the Undisputed Diagnoses are rarely appealed due to the objective, check-the-box nature of the diagnosis and claims process with respect to those particular diseases. And the numbers further show that Class Counsel only "assist" class members in the appeals process *less than ten percent of the time*. Thus, Class Counsel's argument that "the asserted lack of benefit to the [Undisputed Diagnoses] . . . class members presupposes that they will not need to avail themselves of the appeals process, which could well require assistance from class counsel[]" lacks merit. *See* [ECF 10596 at 5].

³ Exhibit A, § 9.

⁴ Exhibit A, § 8.

⁵ *Ibid.*

⁶ *Ibid.*

Class Counsel also argues they are entitled to the holdback for the Undisputed Diagnoses without doing any work for those class members because, without the creation of the Settlement's implementation structure, no class member could benefit from the Settlement. [ECF 10596 at 5]. However, Class Counsel has already been compensated more than \$100 million for the implementation of the Settlement Agreement. There has been \$660,937,749 in notices of monetary awards to date, which Class Counsel insists they are entitled to 5% of, or more than \$33,000,000, for essentially performing no work.⁷

Class Counsel attempts to justify this windfall in the declaration of Christopher A. Seeger [ECF No. 10596-1] by pointing out *two* occasions in which Class Counsel has obtained favorable results for class members with Undisputed Diagnoses. [ECF No. 10596-1 at 2]. Class Counsel notes that his office has assisted class members with Undisputed Diagnoses "who do not have counsel." *Id.* Class Counsel's office presumably has a contingency fee or other agreement with those class members. Thus, Class Counsel is claiming that they are entitled to the monies received by representing those individual class members plus a 5% holdback of their claim value.

The fact of the matter is Class Counsel insists it should be compensated to the tune of \$33 million for performing little to no work. While Class Counsel's position is remarkably ambitious, this Court cannot, in good conscience, allow such a windfall.

Dated: May 10, 2019

Respectfully submitted,

/s/ Dean Gresham

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 Stuart Cochran (TX State Bar No. 24027936)
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⁷ Exhibit A, § 11.

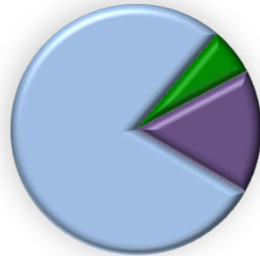
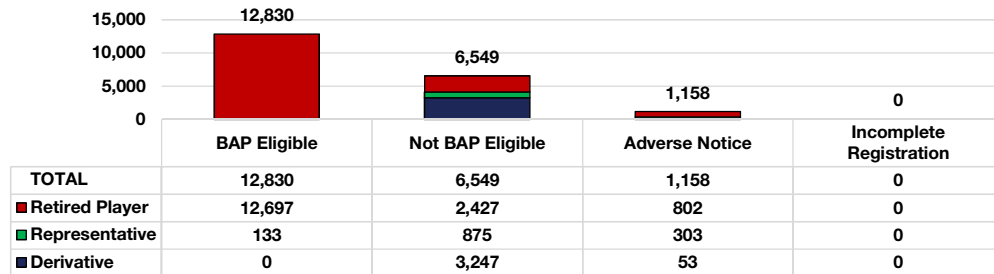
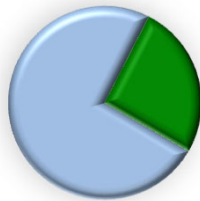
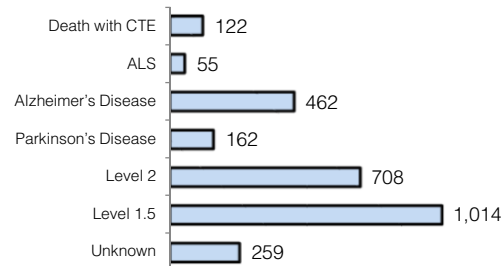
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply in Support of Motion to Release the 5% Holdback and Request for Expedited Hearings* was served on all counsel of record via the Court's ECF system on May 10, 2019.

/s/ Dean Gresham
Dean Gresham

EXHIBIT A

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)**NFL SETTLEMENT PROGRAM SUMMARY REPORT
(AS OF 5/6/19)****SECTION 1: TIMELY REGISTRATIONS****TOTAL: 20,537**■ Retired Player
15,926 (78%)■ Representative Claimant
1,311 (6%)■ Derivative Claimant
3,300 (16%)**SECTION 2: REGISTRATION NOTICES ISSUED BY TYPE****TOTAL: 20,537****SECTION 3: MONETARY AWARD
CLAIMS SUBMITTED: 2,782**■ Retired Player
2,064 (74%)■ Representative Claimant
718 (26%)**SECTION 4: QUALIFYING DIAGNOSIS
ASSERTED IN MONETARY AWARD CLAIMS**

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)**SECTION 5: QUALIFYING DIAGNOSIS DATE ASSERTED
IN MONETARY AWARD CLAIMS**

■ Pre-Effective Date: 1,932 ■ Post-Effective Date: 595 ■ No Date Asserted: 255

Death with CTE



ALS



Alzheimer's



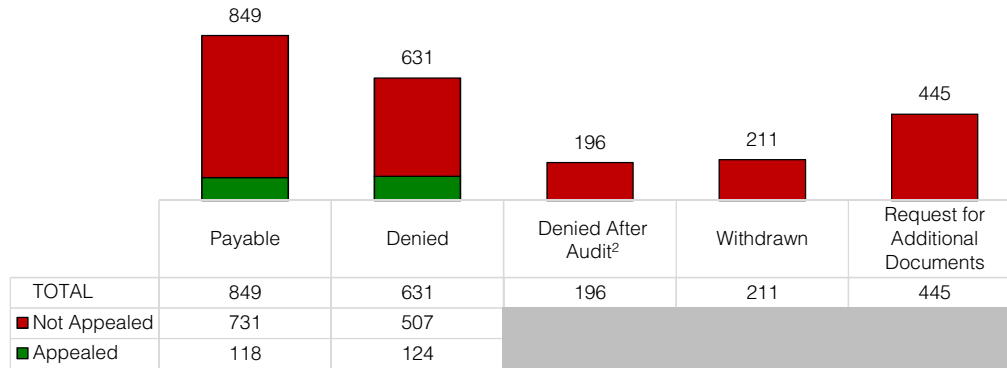
Parkinson's Disease



Level 2

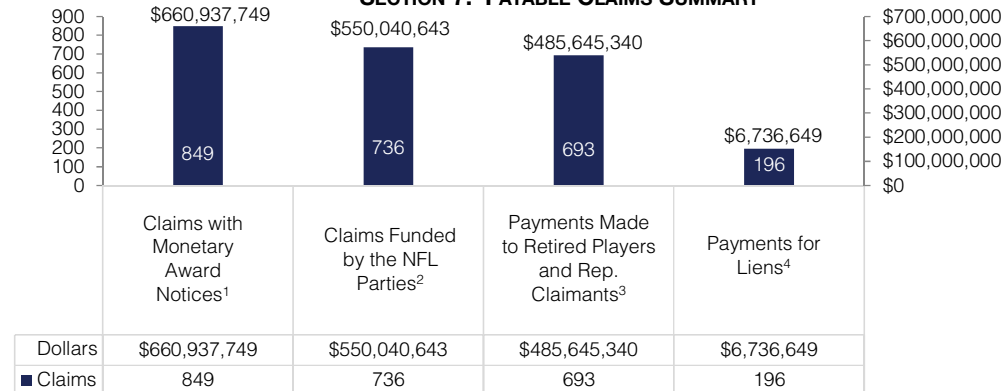


Level 1.5

**SECTION 6: NOTICES ISSUED ON MONETARY AWARD CLAIMS: 2,332¹**

¹ Section 6 counts all Monetary Award claims that have received a notice after claim processing. Claims receiving multiple notices are counted only once based on the most recent notice issued. The number of appealed notices reflects only claims that have been appealed on the most recent notice issued. For a cumulative total of all appeals, see Section 9.

² The results of the audit closed these claims and directed further alternatives for these Settlement Class Members.

SECTION 7: PAYABLE CLAIMS SUMMARY

¹ The dollars and number of claims shown are the number of notices issued before holdbacks for potential Derivative Claimants, common benefit fees, liens and any determinations on appeals.

² The dollars and number of claims shown include claims from Retired Players and Representative Claimants.

³ The dollars shown include payments issued on behalf of Settlement Class Members to Third-Party Funders who have accepted rescission of prohibited assignments entered into with Settlement Class Members.

⁴ The claims shown reflect the Settlement Class Members on whose behalf the Settlement Program has issued payments to resolve liens. The dollars shown reflect all payments the Settlement Program has made on behalf of Settlement Class Members to resolve liens, including (1) payments to the Lien Resolution Administrator to resolve medical liens, (2) payments to the Lien Resolution Administrator for its lien fees, and (3) payments directly to lienholders to resolve non-medical liens.



CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
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SECTION 8		STATUS OF MONETARY AWARD CLAIMS (BASED ON LAST NOTICE OR ACTION ON CLAIM)								
		CTE	ALS	Alzheimer's Disease	Parkinson's Disease	Level 2	Level 1.5	Unknown Qualifying Diagnosis	Total	%
1.	In Review Process at Claims Administrator	1	1	4	0	11	12	8	37	1%
2.	Notice Ready to Issue	1	0	14	6	56	111	3	191	7%
3.	Needs Special Master Statute of Limitations Review	3	11	21	8	4	10	0	57	2%
4.	Last Notice was for Incomplete Claim Package ¹	25	5	23	10	55	64	112	294	11%
5.	Ready for Review by AAP	1	0	18	6	41	63	0	129	5%
6.	Last Notice was Award Notice ²	1	0	14	3	19	15	0	52	2%
7.	Last Notice was Denial Notice ³	1	0	2	0	4	5	11	23	1%
8.	On Appeal Now ⁴	0	0	3	0	10	9	0	22	1%
9.	In Audit Investigation ⁵	0	0	1	0	36	22	0	59	2%
10.	In Audit-Failure to Provide Information	0	0	0	0	0	0	0	0	0%
11.	Referred to the Special Investigator by the Special Masters	0	0	2	0	75	100	1	178	6%
12.	Adverse Audit Report with the Parties for Review	0	0	0	0	0	0	0	0	0%
13.	Adverse Audit Report Awaiting Response from Those Audited	0	0	0	0	0	0	0	0	0%
14.	Adverse Audit Report with the Special Masters for Review	0	0	0	1	1	2	0	4	<1%
15.	Denied After Audit ⁶	0	0	34	0	76	85	1	196	7%
16.	Final Denial	15	2	57	9	117	251	109	560	20%
17.	Withdrawn	0	0	14	3	96	84	14	211	8%
18.	Ready for Next Month's Payment List	0	0	7	2	15	17	0	41	1%
19.	On this Month's Payment List	1	0	8	9	4	13	0	35	1%
20.	Paid ⁷	73	36	240	105	88	151	0	693	25%
21.	Total Claim Packages Submitted	122	55	462	162	708	1,014	259	2,782	100%

1. The Program has issued notices to 1,839 incomplete claim packages, which is 67% of all Level 1.5 and Level 2 claims and 64% of all other claims.

2. For details on all claims receiving an Award Notice and the dollar values assigned, see Sections 7 and 11.

3. For details on all denied claims, including the denial reasons, see Section 10.

4. For details on all appeals filed by Settlement Class Members and the NFL parties, see Section 9.

5. The Program has audited 1,196, or 43%, of all claims, including 759 claims removed from audit and put back into the claims review process, 237 claims currently in Audit Investigation, 4 claims on Adverse Audit Reports with the Parties or Special Masters for Review or awaiting a response from those audited and 196 claims denied after audit.

6. The results of the audit denied these claims and directed further alternatives for these Settlement Class Members.

7. For total dollars paid to or on behalf of these Settlement Class Members, see Part 5 of Section 11.



CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
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SECTION 9		STATUS OF ALL APPEALS ON MONETARY AWARD CLAIMS		
	Status ¹	Appealed by Class Member	Appealed by NFL Parties	Total
A.	Payable Claims	35	113	148
1.	Appeal Filed and in Preliminary Steps	1	4	5
2.	Appellee's Opposition Memo Not Received	0	3	3
3.	Appellee's Opposition Memo Received	1	9	10
4.	Remanded to Claims Administrator	8	1	9
5.	With Special Masters for Decision	0	3	3
6.	Result Upheld on Appeal	18	72	90
7.	Result Overturned on Appeal	3	8	11
8.	Closed or Withdrawn ²	4	13	17
B.	Denied Claims	194	0	194
1.	Appeal Filed and in Preliminary Steps	3	0	3
2.	Appellee's Opposition Memo Not Received	18	0	18
3.	Appellee's Opposition Memo Received	9	0	9
4.	Remanded to Claims Administrator	75	0	75
5.	With Special Masters for Decision	3	0	3
6.	Result Upheld on Appeal	74	0	74
7.	Result Overturned on Appeal	6	0	6
8.	Closed or Withdrawn ²	6	0	6
C.	TOTAL APPEALS	229	113	342

¹ Co-Lead Class Counsel has filed statements in 33 of the Appeals across multiple statuses in the Appeals Process.

² These are appeals we are no longer processing because (1) the appealing party withdrew or (2) it was closed after being in audit.



CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
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SECTION 10 REASONS IN NOTICES OF DENIAL ISSUED ON MONETARY AWARD CLAIMS

	Reason Claim Denied	Notices
1.	Death with CTE Claims	16
	(a) Death Occurred After Final Approval	7
	(b) Death Occurred Before 7/7/14 but Qualifying Diagnosis Was After Final Approval	2
	(c) Death Between 7/7/14 & 4/22/15; Qualifying Diagnosis was greater than 270 Days From Death	1
	(d) Appeals Advisory Panel Denial - Diagnosis Made by Inappropriate Physician	0
	(e) Appeals Advisory Panel Denial - Not Death with CTE	0
	(f) Complete Claim Package Never Provided by Class Member	4
2.	ALS Claims	2
	Complete Claim Package Never Provided by Class Member	1
3.	Alzheimer's Disease Claims	61
	(a) Appeals Advisory Panel Denial - Diagnosis Made by Inappropriate Physician	8
	(b) Appeals Advisory Panel Denial - Not Alzheimer's Disease	57
	(c) Physician Not Qualified to Sign Diagnosis Physician Certification Form	1
	(d) Complete Claim Package Never Provided by Class Member	11
4.	Parkinson's Disease Claims	9
	(a) Appeals Advisory Panel Denial - Diagnosis Made by Inappropriate Physician	4
	(b) Appeals Advisory Panel Denial - Not Parkinson's Disease	12
	(c) Complete Claim Package Never Provided by Class Member	0
5.	Level 2 Claims	146
	(a) Appeals Advisory Panel Denial - Diagnosis Made by Inappropriate Physician	12
	(b) Appeals Advisory Panel Denial - Not Level 2	107
	(c) Physician Not Qualified to Sign Diagnosis Physician Certification Form	17
	(d) Complete Claim Package Never Provided by Class Member	25
6.	Level 1.5 Claims	275
	(a) Appeals Advisory Panel Denial - Diagnosis Made by Inappropriate Physician	24
	(b) Appeals Advisory Panel Denial - Not Level 1.5	209
	(c) Physician Not Qualified to Sign Diagnosis Physician Certification Form	13
	(d) Complete Claim Package Never Provided by Class Member	68
7.	Unconfirmed Qualifying Diagnosis - Complete Claim Package Not Provided	120
8.	Untimely Claim Package	2
9.	TOTAL DENIAL REASONS PROVIDED ON NOTICES	643
10.	TOTAL NUMBER OF SETTLEMENT CLASS MEMBERS RECEIVING A DENIAL NOTICE	631



CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
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SECTION 11

MONETARY AWARD PAYMENTS

	Status by Confirmed Qualifying Diagnosis	Number	Amount
1.	Notices of Monetary Award (Dollars Shown are Before Holdbacks)	848	\$660,937,749
	(a) Death with CTE	75	\$92,660,251
	(b) ALS	36	\$94,026,756
	(c) Alzheimer's Disease	271	\$126,937,237
	(d) Parkinson's Disease	120	\$75,555,957
	(e) Level 2.0 Neurocognitive Impairment	137	\$153,684,881
	(f) Level 1.5 Neurocognitive Impairment	209	\$118,072,668
2.	Not Ready to be Included on the Next Monthly Payment List; or a Claim Hold is in Place (Dollars Shown are Before Holdbacks)	79	\$73,838,959
	(a) Death with CTE	1	\$31,203
	(b) ALS	0	\$0
	(c) Alzheimer's Disease	16	\$8,320,135
	(d) Parkinson's Disease	4	\$2,273,506
	(e) Level 2.0 Neurocognitive Impairment	30	\$44,972,601
	(f) Level 1.5 Neurocognitive Impairment	28	\$18,241,514
3.	Ready to be Included on the Next Monthly Payment List (Dollars Shown are Before Holdbacks)	41	\$46,889,321
	(a) Death with CTE	0	\$0
	(b) ALS	0	\$0
	(c) Alzheimer's Disease	7	\$6,287,180
	(d) Parkinson's Disease	2	\$616,568
	(e) Level 2.0 Neurocognitive Impairment	15	\$28,717,984
	(f) Level 1.5 Neurocognitive Impairment	17	\$11,267,589
4.	Claims in the Payment Process (Dollars Shown are After Holdbacks)	35	\$18,995,886
	(a) Death with CTE	1	\$3,605,656
	(b) ALS	0	\$0
	(c) Alzheimer's Disease	8	\$2,300,194
	(d) Parkinson's Disease	9	\$4,207,071
	(e) Level 2.0 Neurocognitive Impairment	4	\$1,766,405
	(f) Level 1.5 Neurocognitive Impairment	13	\$7,116,560
5.	Paid Claims/Paid to or on Behalf of Class Members or to Lien Holders ¹	849	\$486,357,248
	(a) Death with CTE	73	\$85,141,679
	(b) ALS	36	\$87,083,267
	(c) Alzheimer's Disease	240	\$104,462,943
	(d) Parkinson's Disease	105	\$64,207,661
	(e) Level 2.0 Neurocognitive Impairment	88	\$69,500,176
	(f) Level 1.5 Neurocognitive Impairment	151	\$75,249,614
	(g) Derivative Claimants	156	\$711,908

¹ The dollars shown reflect payments issued to Settlement Class Members and on their behalf after all applicable deductions (e.g., Common Benefits Fees, lien holdbacks, potential rescission amounts for Third-Party Funders, etc.).